

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 177

January 19, 1956

### ESTATES, COMMUNITY PROPERTY: WIDOWS ELECTION TO TAKE UNDER WILL

#### Syllabus:

An agreement by a wife to take according to her husband's will and waive her community property rights in the estate converts community property to separate property and renders all the income taxable to the estate. On distribution widow's basis is fair market value as of date of husband's death.

Advice has been requested as to whether an election by a widow to take her share of her deceased husband's estate according to the terms of his will and to waive her community property rights changes the status of the community property to separate property of the husband, so as to render the income taxable to the estate and to give her a fair market value basis for the entire property received under the will.

The above ruling is based on the decision of the United States District Court for the Northern District of California in Wells Fargo, Executor of the Will of Walter Gibson v. United States, 134 Fed. Supp. 340. The Court held that an election by a widow to take under her husband's will causes the entire community property to become the estate of her husband and, therefore, that all income derived from such property is taxable to the estate and is not taxable half to the widow and half to the estate.

While the court did not deal directly with the question of basis, the Gibson decision was based on the conclusion that the widow's election does change the status of the property into the separate estate of the husband. This being true, any property received by the widow under the will constitutes property received by bequest or devise and her basis for the entire property will be fair market value as of the date of the death of the deceased spouse. (Section 18044, PITL 1955.) This result is consistent with the treatment which, since 1953, has been given to the surviving spouse's share of the community where there is no will and election. See Section 17746.3 (1953) and Section 18045 (1955).